

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA**

IN RE:

HATTIE I. SIEGEL,

Debtor.

CASE NO. 05-30880- BKC-SHF  
Chapter 7

**ORDER DENYING MOTION FOR SANCTIONS, PURSUANT TO RULE 9011(c),  
FILED BY SECURED CREDITOR SILVER FIDELITY TRUST, LLC**

**THIS CAUSE** came on to be heard on August 13, 2005 upon the Motion for Sanctions, Pursuant to Rule 9011(c) (“Motion for Sanctions”) (C.P 22) filed by Silver Fidelity Trust, LLC. On September 13, 2005, McDonald Hopkins, Co., P.A., filed a Memorandum of Law in Opposition to Creditor, Silver Fidelity Trust, LLC’s Motion for Sanctions Pursuant to Rule 9011(c) (C.P. 55). By way of the Motion for Sanctions, Silver Fidelity Trust, LLC (“Silver Fidelity”) seeks to impose sanctions, in the form of attorney’s fees and costs, against Hattie Siegel and her counsel on the basis of a bad faith filing. The Court, having carefully considered the Motion for Sanctions and the Memorandum in Opposition, together with argument thereon, and being otherwise fully advised in the premises, **denies** the Motion for Sanctions.

On March 3, 2005, the debtor filed for relief under chapter 11 of the Bankruptcy Code. On June 6, 2005 this Court entered an Order Granting Motion to Convert Case from Chapter 11 to 7 (C.P. 21). Prior to the filing of the bankruptcy petition, the Village of Tequesta, Florida, was granted a Final Judgment of Foreclosure in the amount of \$1.7 million dollars (“Judgment”) against the debtor in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, (Case No. CA 02-5834AB). Pursuant to the Judgment, the Village of Tequesta sought to foreclose on property of the debtor as a result of a municipal fine entered against the debtor for excessive vegetation and continued failure to adequately maintain her residence. On March 2, 2005, one day prior to the bankruptcy filing, the Village of Tequesta, Florida assigned its Final Judgment of Foreclosure to Silver Fidelity.

At the hearing on the Motion for Sanctions, counsel for the debtor, John T. Metzger, proffered to the Court that three days prior to the scheduled foreclosure sale, he was contacted by Governor Jeb Bush’s Office of General Counsel to represent the debtor in pending state court foreclosure proceedings on a pro bono basis. Mr. Metzger met with the debtor to discuss her case. Two days prior to the scheduled foreclosure sale of the Tequesta property, a hearing was scheduled before Judge Jonathan Gerber in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, to determine the status of the debtor’s Tequesta property with respect to a homestead exemption. Upon Judge Gerber learning of the assignment of the Judgment from the Village of Tequesta to Silver Fidelity, Judge Gerber announced that he would be required to recuse himself due to the fact that Silver Fidelity’s counsel, at that time, was Alfred LaSorte, Esq., who was Judge Gerber’s former law partner. Mr. Metzger asserts that, due to the lack of sufficient time before the foreclosure sale to have a court make the determination regarding the debtor’s homestead status, he was unable to reschedule the hearing. Mr. Metzger further asserts that based upon the consultation

with the debtor, he understood that the debtor was seeking to reorganize her affairs in a chapter 11 bankruptcy through a liquidating plan. In addition to the debtor's Tequesta residence, the Village of Tequesta sought to foreclose its Judgment against three other vacant parcels of land located in Palm Beach County, Florida, owned by the debtor. The debtor also owned a residence in Charleston, South Carolina, along with two adjoining vacant lots. The Judgment did not seek to foreclose the debtor's interest in these South Carolina properties. Therefore, through a liquidating chapter 11 plan, Mr. Metzger contends that the debtor sought to: (1) raise a homestead exemption as to the Tequesta property that Silver Fidelity sought to foreclose, (2) determine Silver Fidelity's standing as a judgment holder, (3) challenge the validity of the assignment of the Judgment by the Village of Tequesta, (4) reduce the fine by the Village of Tequesta as being excessive, and (5) facilitate the liquidation of her assets for the benefit of her creditors.

Stuart Young, counsel for Silver Fidelity, asserts that the debtor and her counsel's actions, both in state and federal court were done solely to delay the state court foreclosure sale at the expense of the debtor's creditors. Mr. Young further asserts that this a two party dispute and that the debtor is 83 years of age, retired, with congestive hear failure such that she had an inability to effectuate a plan of reorganization. Mr. Young, in his argument, cited to *In re Richard Eric Serfass*, 325 B.R. 901 (Bankr.M.D.Fla. 2005), for the proposition that a chapter 11 petition may be considered to be filed in bad faith when a debtor is not employed and seeks bankruptcy protection solely to halt pending litigation. The Court in *Serfass* held that there exist "hallmarks of bad faith filing" which include a two party dispute and no sincere desire to reorganize the financial affairs of the debtor. *Id.* at 905. However, the court further held that when determining whether a chapter 11 petition is filed in bad faith "[t]he real test which still remains is the presence of the honest intention of the debtor, the actual need, and the ability to effectuate the aim of reorganization. *Id.* at 906.

The seminal bad faith filing case in the Eleventh Circuit is *Phoenix Piccadilly, Ltd. v. Life Ins. Co. of Virginia*, 849 F.2d 1393 (11th Cir. 1988), wherein the Eleventh Circuit identified six factors which evidence bad faith filing:

- (i) The debtor has only one asset, the property, in which it does not hold legal title;
- (ii) The debtor has few unsecured creditors whose claims are small in relation to the claims of the Secured Creditors;
- (iii) The debtor has few employees;
- (iv) The property is the subject of a foreclosure action as a result of arrearage on the debt;
- (v) The debtor's financial problems involve essentially a dispute between the debtor and the secured creditors which can be resolved in the pending state court action; and
- (vi) The timing of the debtor's filing evidences an intent to delay or frustrate the legitimate efforts of the debtor's secured creditors to enforce their rights.

*Id.* at 1394-95. Pursuant to *Phoenix Piccadilly*, the courts may consider factors which evidence an intent to abuse the judicial process and the purposes of the reorganization. *Id.* at 1394. In the instant case, there is no dispute that the debtor's financial problems stem from the Judgment. However, the debtor's desire to liquidate her remaining real properties in both Florida and South Carolina for the benefit of her creditors take her bankruptcy out of the realm of a bad faith filing. The Court is satisfied that the debtor availed herself of the protections of bankruptcy for the purpose of conducting an orderly liquidation of her assets. The Court finds that the bankruptcy was filed with an honest intention and real need and ability to reorganize. Accordingly, the Court finds that the debtor's March 3, 2005 chapter 11 filing was an **not** an act of bad faith warranting sanctions under Bankruptcy Rule 9011(c). Accordingly, it is

**ORDERED** that the Motion for Sanctions is **denied**.

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**The Clerk of Court is directed to serve a copy of this Order on all parties in interest.**